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COMPLIANCE WITH EXECUTIVE ORDER 13166:
IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED
ENGLISH PROFICIENCY

1. **PURPOSE**. This Order sets forth EPA's expectations and requirements to ensure compliance with Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency (LEP).¹
2. **APPLICABILITY**. This Order applies to all EPA conducted programs and activities as described below.
3. **DEFINITIONS**. For purposes of this Order:
 - a. "EPA conducted program or activity" is a program or activity administrated by EPA. (Basically, all the operations of EPA).
 - b. "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.
 - c. "Limited English Proficiency (or Proficient)" refers to individuals who have limited ability to read, write, speak, or understand English, and may be entitled to language assistance with respect to a particular type of service, benefit, or consultation or activity conducted by EPA

¹ 65 Fed. Reg. 50121 (August 16, 2000).

4. LEGAL FRAMEWORK.

Executive Order 13166 -

Executive Order 13166 (EO) directs all Federal agencies to “examine the services [they] provide and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency.”²

Title VI of the Civil Rights Act of 1964 (Title VI) –

Title VI provides that no person shall “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”³

40 CFR Part 7 -

40 C.F.R. Part 7 (EPA’s regulations implementing Title VI) provides that Recipients of EPA Assistance, are prohibited from taking actions, including permitting actions, that are intentionally discriminatory or have a discriminatory effect based on race, color, or national origin.⁴

5. REQUIREMENTS FOR EPA CONDUCTED PROGRAMS AND ACTIVITIES

As described below, effective immediately upon signature, this Order requires that EPA ensure its programs and activities are meaningfully accessible to LEP persons. The starting point for ensuring that EPA's programs and activities are meaningfully accessible is a flexible, fact dependent and individualized four factor assessment.

The Four Factor Assessment:

- a. The number or proportion of LEP persons encountered in the impacted population

One factor in determining what language services should be provided in EPA conducted programs or activities is the number or proportion of LEP persons from a particular language group served or encountered in the eligible population. This population includes persons in the geographic area that constitute the service area applicable to that particular program or activity. When considering the number or proportion of LEP individuals served or affected by a proposed EPA action in the community, EPA

² <http://www.epa.gov/ocr/docs/eo13166.pdf>

³ Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d to 2000d-7)

⁴ <http://www.epa.gov/ocr/docs/40p0007.pdf>

should take into account the number of LEP parents, legal guardians or recognized heads of household even if their children or other household members are proficient in English.

In determining the appropriate level of language assistance needed in a particular situation, EPA should first consider prior interactions between EPA and LEP community members, including the breadth and scope of language services needed in the past. In conducting this analysis, EPA should determine the language proficiency of populations that are eligible for its programs or activities and whether any populations are underserved because of existing language barriers. Other data should be consulted to refine or validate EPA's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.⁵

- b. The frequency with which LEP individuals come in contact with the EPA program or activity

The second factor in determining what language services EPA should provide is an assessment of the frequency with which it has or should have contact with LEP individuals from different language groups served by EPA. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The assessment will differ when EPA serves an LEP person on a one-time basis then when EPA serves LEP persons daily.

Less frequent contact with different language groups may suggest a different and less intense solution. If an LEP individual accesses a program or service on a daily basis, EPA has greater duties than it would have if the contact were unpredictable or infrequent. But even when EPA serves LEP persons on an unpredictable or infrequent basis, it should use this balancing analysis to determine specific services for LEP individuals under the program or activity in question. This approach need not be intricate. It may be as simple as being prepared to use one of the commercially available telephonic interpretation services to provide immediate interpreter services. In applying this standard, EPA should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

- c. The nature and importance of the program, activity or service provided by EPA

The third factor concerns the nature and importance of the matter – the

⁵ The focus of the analysis is on lack of English proficiency. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak these languages. When using demographic data, it is important to focus on the languages spoken by those who are not proficient in English.

more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. For example, EPA's obligation to communicate information to a person who may be adversely impacted by immediate water source contamination or by a sudden release of airborne toxic chemicals differs from providing information on efforts to increase recycling. Where denial or delay of access to services or information could have serious or even life threatening implications for the LEP individual, the need for language services is extremely high. Similarly, a decision by EPA to make an activity, warning or notice compulsory, such as efforts about lead-based paint, can serve as strong evidence of the program's importance.

d. Resources and costs

Resources and costs may have an impact on the specific steps EPA takes to provide meaningful access to LEP persons. EPA may incur reasonable costs and take reasonable steps to comply with the terms of this Order. In doing so, EPA should weigh the costs of any particular approach it chooses against the benefits to be realized. EPA should carefully explore the most cost-effective means of delivering competent and accurate language services. Resources and cost issues can often be reduced by technological advances and the implementation of sound business practices.

Some approaches that may reduce costs include but are not limited to:

- Sharing of language assistance materials and services among and between EPA offices and programs;
- Information sharing with industry groups;
- Information sharing with advocacy or affinity groups;
- Telephonic and video conferencing interpretation services;
- Pooling resources and standardizing documents to reduce translation needs;
- Using qualified translators and interpreters to ensure that documents need not be fixed later and that inaccurate interpretations do not cause delay or other costs; centralizing interpreter and translator services to achieve economies of scale;
- Formalized use of qualified community volunteers.

How Do I Apply the Four Factor Assessment?

The four factor assessment can be used to help programs assess what reasonable steps should be taken to ensure meaningful access for LEP persons. After applying the above four factor assessment, you may conclude that different language assistance measures are needed for the different types of programs or activities that you manage. For instance, some of your activities will have greater impacts on or contact with LEP persons and, thus, may require more in the way of language assistance. The converse is also true: some activities will have less impact and may require less language assistance. In either case, the obligation to address those needs should be addressed.

Example 1: EPA promulgates environmental regulations. The regulations require public notice and comment. EPA should take reasonable steps to ensure LEP persons have a meaningful opportunity to comment on proposed regulations. Taking into account the nature and importance of the proposed regulations, EPA should affirmatively develop and employ creative measures at reasonable costs to eliminate or minimize communication barriers that interfere with the ability of LEP persons to provide input. If a particular rule is expected to significantly impact the health and safety of a large, non-English speaking community, greater emphasis should be given to LEP considerations in public notices, hearings, and other interactions.

Example 2: EPA issues environmental permits. When the permitting action affects LEP persons, the permit process is subject to the same kinds of language concerns present in the promulgation of environmental regulations. EPA needs to determine the number of LEP individuals impacted by the environmental permit. EPA should then weigh various measures to allow LEP individuals' participation in any environmental permitting comment process, like receiving public notice, in light of the nature and importance of the permit at issue. Addressing language concerns in the environmental permitting process is critical to ensure that communities can participate in the permitting process.

Example 3: EPA enforces environmental laws. Enforcing environmental laws often requires public input. Private citizens often file complaints and can be important sources of information—but only if they can communicate with the relevant authority for enforcing those laws. Taking this factor into account EPA should affirmatively develop and employ creative measures at reasonable costs to eliminate or minimize communication barriers that interfere with the ability of LEP persons to provide this information.

6. COMPLIANCE WITH LEP REQUIREMENTS AND REVIEW OF GUIDANCE

Recipients of EPA financial assistance have similar obligations to provide meaningful access to LEP persons pursuant to Title VI. Most, if not all, state environmental agencies are recipients of EPA financial assistance and have delegated or authorized federal programs. To help recipients of EPA financial

assistance, including state agencies with delegated or authorized federal programs, satisfy those obligations, EPA issued guidance entitled, "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (LEP Recipient Guidance).⁶

Consistent with the provisions of this Order, EPA shall ensure that all existing and future program guidance (written or oral) is consistent with this Order and EPA's LEP Recipient Guidance. Therefore, within 90 days of the date of this Order, each program office and region shall develop an LEP review plan that describes how it will review and assess all existing and future guidances and any other relevant program materials for conformity with this Order as described in this section. These LEP review plans must be submitted to the Office of Policy.

7. TECHNICAL SUPPORT.

OCR will provide technical assistance to EPA program offices for implementation of this Order. If you have any questions or are in need of technical assistance please contact OCR at 202-564-7272.

8. REVIEW DATE.

This order will be reviewed three (3) years from the date of approval to ensure that it is meeting its stated purpose.

9. RESOURCES.

EPA 2004 LEP Recipient Guidance